Please cite as: EUAA, '4.2.5. Use of the discretionary clause' in *Asylum Report 2023*, Μάιος 2023.

4.2.5. Use of the discretionary clause

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icon for discretionary clause

Discretionary clauses are defined in Article 17 of the Dublin III Regulation. Article 17(1) is also referred to as the sovereignty clause, which allows a Member State to examine an application for international protection lodged by a third-country national or a stateless person, even if such an examination is not its responsibility under the criteria laid down in the regulation.

In the context of the discretionary clause, a partner country is the country to which a take back or take charge request could have been sent before invoking the clause.

Article 17(1) was invoked about 4,800 times in 2022, increasing for the first time in 4 years but still well below pre-pandemic levels. It was applied most frequently by Belgium, followed at a distance by France, Germany and the Netherlands. The discretionary clause was used mostly for Afghan citizens in Belgium and Germany; Syrians in the Netherlands and Belgium; and Turks in the Netherlands.

For the first time, Bulgaria was identified as the main partner country to which requests could have been sent, mostly in relation to Afghan applicants. This was followed closely by Greece, for which the discretionary clause was evoked mostly in relation to Turkish applicants. Other commonly identified partner countries included Italy and, at lower levels, Spain, Germany and France (in descending order).[xxviii]

- [xxviii] The share of ‘unknown’ partner countries decreased from 22% in 2021 to 1% in 2022. Therefore, the actual number of times a particular country was deemed responsible by another Member State in 2021 may have been underestimated.

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